

REMARKS

Entry of the foregoing and consideration of the application identified in caption on the merits, as amended, are respectfully requested.

As noted in the Response filed on January 2, 2009, the Official Action dated August 1, 2008, does not take into consideration the Preliminary Amendment filed on June 21, 2005.¹ In this regard, the Official Action contains an objection to claims 4-35 and a rejection of claims 1-3. However, claims 1-35 were canceled, and new claims 36-81 were added in the Preliminary Amendment. Such new claims have not been considered in the Official Action, and are not listed at item 4 of the Office Action Summary. Accordingly, as previously requested, withdrawal of the Official Action dated August 1, 2008, is now in order, and such action is respectfully requested. Further, issuance of a new Official Action taking into account the Preliminary Amendment filed on June 21, 2005, as well as the present paper, is respectfully requested.

By the above amendments, claim 36 has been amended to recite that the single piece of matter is resorbable by an organism. Claim 36 has also been amended to recite that at least a portion of the open porous scaffold allows an in-growth of regenerating bone tissue. Support for such amendments can be found in the instant specification at least at paragraphs [0008], [0023], [0030] and [0083] of the published application. Claims 42, 48, 54, 58, 64, 69, 74, 75 and 78 have been amended for readability purposes and/or to correct typographical errors.

¹ The Patent Office's receipt of the Preliminary Amendment filed on June 21, 2005, has been confirmed in the Patent Office PAIR system. In addition, the claim count set forth in the Filing Receipt dated March 13, 2006, reflects the receipt of, and is consistent with, the claim amendments set forth in the Preliminary Amendment.

While currently pending claims 36-81 have neither been examined nor considered by the Patent Office in the Official Action dated August 1, 2008, Applicants provide the following remarks concerning U.S. Patent 6,054,142 (*Li et al*), which was cited in the Official Action, for the Examiner's consideration.

Li et al relates to a biocompatible cell device having an internal foam scaffold to provide a growth surface for encapsulated cells which produce a biologically active molecule. See abstract.

Li et al does not disclose each feature recited in independent claim 36, and as such does not constitute an anticipation of such claim. For example, *Li et al* does not disclose a scaffold and a membrane which form a single piece of matter that is resorbable by an organism, as recited in claim 36. By comparison, *Li et al* discloses the use of a foam scaffold with an open cell or macroporous structure with discrete pores. See col. 5, lines 34-36. *Li et al* discloses that such foam scaffold is a non-biodegradable material that allows attachment of adherent cells. See col. 5, lines 37-39. At column 3, lines 11-17, *Li et al* describes the disadvantages of employing a biodegradable or resorbable material in the scaffold, and teaches the criticality of employing a non-biodegradable material in the scaffold. It is clear that *Li et al* does not disclose a scaffold and a membrane which form a single piece of matter that is resorbable by an organism. As such, *Li et al* does not constitute an anticipation of independent claim 36.


If there are any questions concerning this paper or the application in general,
the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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